tion in this case so far as jurisdiction after July 1st, 1939, is concerned. The court in that case held that the action may continue if revived in the name of a party that has no interest in the outcome, provided the actual parties are the real movants. The same question was decided by the Court of Appeals prior and since that decision, and the decision in Fordson vs. Jackson 7th Fed. (2) 117, and Kentucky Code 508-510 were ample binding authority on the Circuit Court of Appeals for 6th Circuit.

In Whalen vs. Welsh 269 Fed. 689 the question was discussed and the court arrived at the opinion that substitution must be made within six months after the date of resignation.

Under Section 236 USC the judgment would be void.

THE MOTION FOR JUDGMENT.

(17) The motion for judgment pro-confesso, made on December 11th, would be the next order of the court on the return of the case.

Norfolk Ry. vs. Hazelrigg 170 Fed. 551 (Ky. case, 6th Circ.)

C. & O. vs. Thieman 96 Kentucky 507

Kentucky Code 90 ("if no defense pleaded")

Kentucky Code 386, Auto vs. Stone, 237 Ky. 686.

Evans vs. Stone 80 Kentucky 78

Milliken vs Milliken 23 S. W. 352.

(18) *The Franklin Circuit Court had no jurisdiction to issue a summons* which was not served by the party it was issued to, and a penal statute in

Kentucky must be enforced under the Jurisdiction of the court, in the county where the offense was committed; and no attorney or officer can segregate from the statute the money penalties and leave out the jail penalties, in order to avoid jurisdiction of the court where the offense, if any, was committed. If the tax was not paid, and the Morris Co. had defaulted in the sum of $10,000, the tax became due after finding of guilt in the trial of a state court in Boyd County, on a plea of "Not Guilty." The court of appeals having held that this is the proper proceedure under such a statute.

Com. vs. Grand Central Bldg. Loan Assoc. 97-325

Licking River Lumber Co. vs. Benlosky 6 Kentucky

DeWolf vs. Mallet's Admr. 33 Ky. 214

Ernst vs. Pike 232 Kentucky 680

Smith vs. Dungey 173 702.

Casey Milling Co. of Newport vs. 156 Ky. 623.

Morris Co. could not appear. Sec. 671 Ky. Stat.

We submit that all the questions here are not to be discussed, and we rely upon the fact that there is no escape from determining the issues here on an ex parte basis, and that the judgment of this court must be to J. W. Martin and Commonwealth of Kentucky, to return the 225 cases in the possession of the court, and the sixty cases seized without attachment order. *The question before this court being one of law*, on the agreed condition of the record,

rather than one of fact as shown by the record. The proceedure however ought to be determined by this court in its mandate, laid down to the Circuit Court of Appeals of the Sixth Circuit, with directions to the United States District Court, and for the trial of this cause by a judge outside of the district. Hence petition should be allowed.

Respectfully submitted,

HARVEY H. SMITH.

We concur in the law as presented, and the facts so far as shown by the files denied of record, and protest the manner of Judicial determination; and for the undisclosed claimants, for return of their money paid unlawfully in import taxes; that this petition should be granted and an impartial hearing be directed.

GEO. E. WHITMAN.